

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Ivy Academy)	Hamilton County
	Property ID: 073 111.29)	Exempt No. 83331
	Property ID: 073 111.49)	Exempt No. 83332
	Property ID: 073 111.50)	Exempt No. 83333
	<i>Claim of Exemption</i>)	

Corrected Initial Decision and Order

Statement of the Case

This is a taxpayer appeal of effective date of exemption determinations by the designee of the State Board of Equalization ("State Board"). On October 21, 2014, the State Board designee approved the applications, effective May 21, 2014. The taxpayer timely appealed the effective date of exemption determinations.

The undersigned administrative judge conducted the hearing on July 14, 2015¹ in Chattanooga. Taxpayer principal Angela Markum, taxpayer counsel Barry Abbott, Esq., and Hamilton County Property Assessor employee Theresa Lowe participated.

On September 1, 2015, the administrative judge issued an initial decision and order on this matter. On September 4, 2015, the assessor's office timely requested that the administrative judge reconsider and correct the September 1, 2015 initial decision and order. The administrative judge and the taxpayer agreed with the assessor's recommended changes. Accordingly, the September 1, 2015 initial decision and order is set aside and superseded with the instant corrected initial decision and order.

¹ The administrative judge left the record open until August 28, 2015 in order to provide the taxpayer the opportunity to provide more information regarding the lease arrangement discussed below.

Findings of Fact and Conclusions of Law

Article II, Section 28 of the Tennessee Constitution permits, but does not require, the legislature to exempt from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Tenn. Code Ann. §67-5-212(a)(1) provides that:

There shall be exempt from property taxation the real and personal property, or any part of the real or personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and actually used by such institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists. There shall further be exempt from property taxation the property, or any part of the property, owned by an exempt institution that is occupied and actually used by another exempt institution for one (1) or more of the exempt purposes for which it was created or exists under an arrangement in which the owning institution receives no more rent than a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation and interest, as determined by the board of equalization.

Shortly after acquiring ownership of subject parcel 73 111.29 on January 31, 2014, the taxpayer began exempt school operations. The taxpayer acquired and began using parcels 73 111.49 and 73 111.50 for exempt school purposes on April 16, 2014.

Because the taxpayer’s applications were postmarked May 21, 2014, the State Board designee determined that the exemption applications were made one day after the May 20, 2014 application deadline for the year and that the effective dates of exemption were therefore May 21, 2014.² The administrative judge respectfully disagrees because Tenn. Code Ann. § 67-1-107 provides a one-day grace period from the date of postmark for the filing of tax documents by mail. Because the administrative judge finds the taxpayer met the May 20 exemption application deadline by virtue of that one-day grace period, the administrative judge finds the exemptions

² Tenn. Code Ann. § 67-5-212(b)(3)(A)(ii) provides that in the event of a post-May 20 application “filed more than thirty (30) days after the exempt use began, the exemption will be effective as of the date of the application.”

should be effective as of the dates the taxpayer began to own, occupy, and use the respective parcels.³

A secondary issue at the hearing was a lease arrangement between the taxpayer and a church. The lease, which began in March 2015, allowed a church to use the subject for exempt religious purposes in exchange for a \$125 per week fee. The taxpayer provided documentation and analysis showing that a portion of the taxpayer-borne janitorial, maintenance, repair, disposal, utilities, and insurance expenses proportionate to the tenant's share of the active use of the facility exceeded the \$125 per week fee.⁴ The administrative judge finds that the taxpayer did not charge its exempt institution tenant more than a "reasonably allocated share of the cost of use" under Tenn. Code Ann. § 67-5-212(a)(1). Accordingly, the exempt institution church's partial occupancy and use of the subject also qualified for exemption.

Order

It is, therefore, ORDERED:

1. The September 1, 2015 initial decision and order is set aside.
2. Subject parcel 73 111.29 (Exempt Record No. 83331) is to be treated as exempt as of January 31, 2014.
3. Subject parcels 73 111.49 (Exempt Record No. 83332) and 73 111.50 (Exempt Record No. 83333) are to be treated as exempt as of April 16, 2014.

³ Generally, if an exemption application is made on or before May 20, exemption becomes effective as of the *latter* of January 1 of the year of application or the date the successful applicant began to own, occupy, and use the property in a qualifying manner. Tenn. Code Ann. § 67-5-212(b)(3)(A).

⁴ For space used on an alternating basis by an exempt institution landlord and an exempt institution tenant, the administrative judge agrees with the taxpayer's utilization of the following formula:

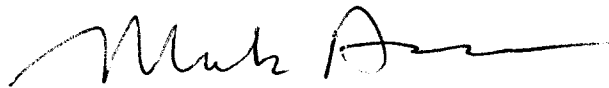
$$\text{Rent cap} = (\text{landlord-borne allowable expenses}) * (\text{tenant hours of active use}) / (\text{total hours of active use}).$$

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 8th day of September 2015.



Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Angela Markum
Ivy Academy, Inc.
8520 Dayton Pike
Soddy Daisy, TN 37379

Barry L. Abbott, Esq.
Cavett & Abbott, PLLC
801 Broad Street, Suite 428
Chattanooga, Tennessee 37402

Bill Bennett
Hamilton Co. Assessor of Property
6135 Heritage Park Drive
Chattanooga, Tennessee 37416

This the 8th day of September 2015.



Janice Kizer

Department of State
Administrative Procedures Division